

No. 15042

United States
Court of Appeals
for the Ninth Circuit

SEATTLE ASSOCIATION OF CREDIT MEN,
a Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Western District of Washington,
Northern Division.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 3992

SEATTLE ASSOCIATION OF CREDIT MEN,
a Corporation,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

Plaintiff complains against the defendant as follows:

I.

Plaintiff is a non-profit corporation organized and existing under the laws of the State of Washington and engaged in the business of representing unsecured creditors in credit extensions granted to business enterprises through the medium of trust mortgages. Plaintiff operates in the State of Washington and the Territory of Alaska and has its principal offices in Seattle, Washington. Plaintiff brings this action on its own behalf and on behalf of creditors secured by the hereinafter-referred-to chattel mortgage in trust.

II.

That the defendant, United States of America, is a corporation sovereign and body politic.

III.

Jurisdiction is founded on the existence of a federal question and amount in controversy. The action arises under the Internal Revenue Laws of the United States, 26 U. S. C., §§ 6321, 6323, 6331, and 6332. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.00. Jurisdiction is also founded on 28 U. S. C., §2410.

IV.

Western Appliance Co., Inc., at all times herein mentioned, was a corporation organized and existing under the laws of the State of Washington with offices in Seattle, Washington. On July 1, 1952, while solvent, but unable to pay all of its bills in the ordinary course of business, Western Appliance Co., Inc., at the request of its unsecured creditors, made and executed to the plaintiff a chattel mortgage in trust for the purpose of securing an extension of time within which to pay its existing unsecured liabilities. That said mortgage, a copy of which is attached, marked "Exhibit A," and by reference thereto made a part hereof, was duly recorded with the Auditor of King County under file No. 2860934, receiving No. 4251205, on the third day of July, 1952. That said chattel mortgage was given as security for the payment of a promissory note for \$22,000.00, dated July 1, 1952. That at the same time plaintiff took from said corporation an assignment of accounts receivable, a copy of which is attached, marked "Exhibit B" and by reference made a part hereof, notice of which was

duly given to the Secretary of State on or about July 1, 1952.

V.

That at the time of the execution of said trust mortgage, Western Appliance Co., Inc., was indebted to the United States in the sum of \$149.54 for F.U.T.A. taxes, which sum has since been abated to \$21.04. Plaintiff admits that the latter sum of \$21.04 is due and owing to the United States as a claim entitled to priority out of the proceeds of the assets covered by said chattel mortgage in trust.

VI.

On June 2, 1953, Western Appliance Co., Inc., being then insolvent, found itself unable to make the payments under said note and trust mortgage and offered to, and executed, in favor of the plaintiff, a bill of sale to all of the assets covered by said mortgage, in lieu of foreclosure thereof, which Bill of Sale was recorded on June 5, 1953, with the Auditor of King County under Receiving No. 4351859. That a copy of said bill of sale is attached hereto, marked "Exhibit C" and by reference made a part hereof.

VII.

On June 15, 1953, following a sale of said assets by the plaintiff, the District Director of internal Revenue, through his agents and employees, made a levy upon the plaintiff for WT-FICA taxes in the total sum of \$1,632.29 due and owing by Western Appliance Co., Inc., for the quarter ending March 31, 1953, for which a lien had been filed by the

United States Government on June 15, 1953, being Lien No. 25778, in the amount of \$1,339.55, plus penalties and interest. Demand was therewith made upon the plaintiff for the amount necessary to satisfy said taxes, all of which taxes accrued after July 1, 1952, date of said trust mortgage.

VIII.

Plaintiff made answer to said levy on July 16, 1953, setting forth funds in its possession in the amount of \$4,176.37, admitting liability on the aforesaid F. U. T. A. tax as abated to the sum of \$21.04 and setting forth the existence of the aforesaid trust mortgage.

IX.

At the time of the execution of said trust mortgage, Western Appliance Co., Inc., had been in the business of selling appliances on conditional sale contracts, which contracts were then, with full right or recourse assigned to the National Bank of Commerce, University Branch, Seattle, for collection. Said bank, as a part of said assignment, accumulated a portion of the proceeds of each contract into a fund called a "reserve fund" to secure the bank's contingent liabilities on said contracts. No accounts were assigned by Western Appliance Co., Inc., to said bank on or after the date of said trust mortgage.

X.

Plaintiff notified said bank of the existence of said trust mortgage on or about July 2, 1952, and of the assignment of accounts receivable. On March

27, 1953, Western Appliance Co., Inc., authorized said bank to pay the "reserve account" directly to the plaintiff. That a copy of said authorization is attached, marked "Exhibit D" and by reference made a part hereof. Thereafter said bank forwarded monthly reports to plaintiff on all contracts assigned by Western Appliance Co., Inc., to the bank, and where defaults occurred on said contracts, required the plaintiff to repurchase said contracts pursuant to the terms thereof, after which the plaintiff made its own collection on said contracts.

XI.

On June 18, 1953, the District Director of Internal Revenue, through his agents and employees, served on the University Branch of the National Bank of Commerce a levy for the same taxes secured by the same lien heretofore referred to, and on July 6, 1953, said bank made answer to said levy, denying that it held any money or property belonging to Western Appliance Co., Inc., and setting forth the interest of the plaintiff therein.

XII.

All of the contracts covered by said "reserve fund" have now been paid in full, and said bank no longer claims any interest therein and is ready to pay the proceeds to whomsoever may be entitled to them, but has refused to pay said proceeds to the plaintiff because of said levy. Said proceeds now amount to \$472.68 in cash and two U. S. Treasury Bonds in the face amount of \$1,000.00 each.

XIII.

Plaintiff, through its attorneys, has on numerous occasions requested the District Director of Internal Revenue and his civil advisory counsel to release said levies, but on each and every occasion the District Director of Internal Revenue and/or his counsel have refused to do so despite the fact that Western Appliance Co., Inc., has no interest whatsoever in any of the funds hereinabove referred to.

XIV.

In connection with said trust mortgage numerous claims were filed with the plaintiff on behalf of the unsecured creditors of Western Appliance Co., Inc., existing as of July 1, 1952. The total amount of those claims is \$21,404.85. To date, said creditors have received on said claims the sum of \$2,140.50, and the plaintiff has on hand, not including funds now in the possession of the National Bank of Commerce, University Branch, the sum of \$2,528.06 with which to pay a final dividend to creditors. More than a year has expired since said levies, and the plaintiff has been unable to make any further distribution to said creditors.

XV.

None of the moneys in the hands of the plaintiff, or in the possession of said bank, but belonging to the plaintiff, are moneys of Western Appliance Co., Inc., but because of said levies, plaintiff has been prohibited for more than one year from disposing

of said moneys and will continue to be prohibited unless said levies are released or disposed of.

XVI.

That said levies constitute a cloud upon the title of the plaintiff to the funds in the plaintiff's hands and in the hands of the University Branch of the National Bank of Commerce. That defendant has made no effort to seize the property in the hands of the plaintiff and the National Bank of Commerce nor made any attempt to collect the tax underlying said levies, and has consistently refused to permit the plaintiff to adjudicate the question of plaintiff's right to said funds.

Wherefore, plaintiff prays as follows:

(1) That plaintiff's title to the aforesaid funds in its hands and in the hands of the National Bank of Commerce be quieted, and the cloud of the United States of America occasioned by levies against said funds be removed.

/s/ WILLARD HATCH,

CROSON, JOHNSON &
WHEELON,

Attorneys for Plaintiff.

EXHIBIT A

Chattel Mortgage in Trust

This Indenture, made this 1st day of July A. D. 1952, by Western Appliance Co., Inc., a Corporation, doing business at 6601 Roosevelt Way, in the city of Seattle, County of King, State of Washington, Mortgagor to the Seattle Association of Credit Men, a Washington Corporation, of Seattle, King County, Washington, Mortgagee, Witnesseth:

Whereas, said mortgagor desires to obtain an extension of time in which to pay the claims and demands of its creditors, a list of which creditors is herewith furnished to said mortgagee, showing the amounts respectively due and owing to said creditors by said mortgagor; and,

Whereas, said mortgagee is willing to take a mortgage from said mortgagor on all its property of every kind and description as security for the payment by said mortgagor to said mortgagee of the sum of Twenty-two Thousand and No/100 (\$22,000.00) Dollars in the manner hereinafter provided for, to apply on each and every bona fide creditor's claim filed with said mortgagee, equally and ratably, and without preference, and whether or not said creditor may have been mentioned in said list furnished to said mortgagee.

Now therefore, the said mortgagor, in consideration of the premises, and of the covenants hereinafter contained, and of the sum of One (\$1.00) Dollar, to it in hand paid by said mortgagee, and other valuable considerations, the receipt whereof

is hereby acknowledged, has, for the purpose of securing the payment of said claims and debts, represented as aggregating the said sum of Twenty-two Thousand and No/100 (\$22,000.00) Dollars, granted, bargained, sold and mortgaged, and by these presents does grant, bargain, sell and mortgage unto the said mortgagee, its successors and assigns, the following described personal property, to wit;

All that certain stock of goods, wares and merchandise* (see reverse side) together with all good will incident to the business, all routes, customer lists, patents and patent rights and trade-marks and all personal property of every kind and description used in, about and as a part of the business of said mortgagor,

and whether or not the same is contained or used in or about the premises above described, including among other things those certain fixtures, furniture, tools, appliances, machinery and equipment and automobiles more specifically described in an itemized list attached hereto marked Exhibit "A" and made a part hereof, which list shall not be considered as excluding any other item of property covered by the general description in this paragraph; wheresoever located;

and all books of account, and accounts and notes, contracted and to be contracted from the sale of the

*Consisting principally of radios, television sets electrical appliances, parts and supplies, etc.,

above goods, wares and merchandise and additions thereto, the same having been assigned by a separate instrument in writing; and all cash now on hand, deposited in bank, or hereafter acquired;

together with all goods, wares and merchandise furniture and fixtures, tools and appliances, machinery and equipment, and automobiles, which may be added to and incorporated or mixed with the same by said mortgagor, and whether or not such items are renewals, repairs, replacements, or a complete substitution therefor;

and said mortgagor does hereby certify that it is the true and lawful owner of said property, that the same is now in its possession, and is principally located at and in or about that certain building or storeroom known as 6601 Roosevelt Way, City of Seattle, County of King, and State of Washington; that it has the right to mortgage, sell and transfer the same, and that the said property is free and clear from all encumbrances except the following: Valid subsisting liens and encumbrances of record.

To Have and to Hold, all and singular, the personal property aforesaid forever, but in trust, nevertheless, for the use and benefit of the present unsecured creditors of said mortgagor, subject to the terms, conditions, provisions and stipulations hereinafter set forth; provided, always, and these presents are upon the express condition, that if the

said mortgagor shall pay or cause to be paid unto the said mortgagee, its successors or assigns, the sum of Twenty-two Thousand and No/100 (\$22,000.00) Dollars, with interest at the rate of 6 per cent per annum from date hereof until paid, according to the conditions of one certain promissory note of even date herewith made payable in instalments, on demand, or at a date certain to said mortgagee, with interest as set forth above, then these presents to be void and of no effect.

It is Further Hereby Mutually Agreed by and between the parties hereto as follows, to wit:

First: That until the total indebtedness secured by this mortgage is fully paid and satisfied, said mortgagor shall pay unto the said mortgagee from the proceeds of the sales of said goods, wares and merchandise herein mortgaged, together with all amounts collected from accounts receivable, the net balance remaining after deducting the necessary expenses of operating the business of said mortgagor and the purchase of new merchandise stock for cash sufficient for the needs of said business; and for the above purpose a true and correct accounting** shall be had between said mortgagor and said mortgagee on or before the 15th day of each and every month during the life of this mortgage of the proceeds of said business for the preceding month, but in no event shall the payments made under said accounting be less than the sum of Five Hundred

*Commencing September 1, 1952.

**In writing.

and No/100 (\$500.00) Dollars,* the same to be credited on said note in accordance with its terms, any excess, however, to be credited on the last payment due on said note.

Second: That if the claims against said mortgagor filed hereunder with said mortgagee exceed the sum of \$22,000.00 together with interest, and expenses as hereinafter provided for the said mortgagor agree to pay such amount in excess of \$22,000.00 before this mortgage will be void and of no effect; but in the event that such amount is less than \$22,000.00, the difference between such amount and \$22,000.00, shall be credited as a final payment on said note and mortgage.

Third: That at the option of the mortgagee it may select the manager, bookkeeper, clerk or cashier of the business of said mortgagor to take charge of its finances, accounts and books of record his reasonable wages to be paid to him, the same as other employees of the business; that said mortgagee may further, at its option by its agents or officers, take charge of, supervise and control the business of said mortgagor in any manner it may deem best to secure the claims of creditors, as security for which this mortgage is given.

Fourth: That said mortgagee shall first deduct from the funds derived from this mortgage its necessary expenses of administering its trust hereunder, together with a reasonable compensation, which is

hereby declared to be the sum of ten (10%) per cent of all moneys paid to it under this mortgage; provided however that a minimum compensation of Seven Hundred Fifty and No/100 (\$750.00) Dollars shall be retained in the event of compromise settlement or receipt of less than the full amount of this mortgage, and the balance of all moneys coming into its hands under this mortgage shall be paid equally and ratably to the present unsecured creditors whose claims have been or hereafter shall be filed with said mortgagee, or proven to its satisfaction, but no person or persons or corporation having an obligation or charge against the mortgagor subsequent to the date hereof shall be permitted to participate as a creditor under this mortgage. *(See reverse side for remainder of this paragraph.)

Fifth: That said mortgagor agrees to insure said property against loss by fire for its full value up to the amount of the mortgagee's interest under this mortgage, pay the premiums therefor, and deliver the policies to the mortgagee; said mortgagor further agree to pay all taxes and claims, or charges for rent or labor, which could become a lien against said property and take precedence over this mortgage; and in the event that said mortgagor fails, neglects, or refuses to pay any of the items set

*To the extent of such subsequent obligations: Provided further, that one-half of the mortgagee's compensation hereunder shall be paid by the mortgagor, and one-half shall be paid by the creditors who are the beneficiaries hereunder.

forth above in this paragraph as and when they become due, the mortgagee at its option may pay the same and the amount thereof shall be added to the amount due otherwise under this mortgage with like interest thereon.

Sixth: That as long as the conditions of this mortgage are fulfilled, the said mortgagor is to remain in peaceful possession of said property, and in consideration thereof agrees to keep said property in as good condition as it now is, reasonable wear and tear excepted.

Seventh: That if default shall be made in the payment of any sum of money due under said periodical accounting, or of any installment due on said note, or any portion of the principal thereof, or any of them, when and as the same becomes due and payable, or in any of the covenants and agreements hereinabove contained, or if any attempt shall be made to remove, dispose of, injure or abandon said property, or any part thereof, by said mortgagor, or any other person, or if said mortgagee shall at any time deem itself not secure, then, thereupon and thereafter, it shall be lawful, and the said mortgagor hereby authorizes the said mortgagee, its assigns, or authorized agents, to take possession of said property wherever the same may be found, with or without process of law and sell and dispose of the same and all equity of redemption at public or private sale and with or without notice as provided by law, and on such terms as said mortgagee, its successors, assigns, or

agents may see fit, retaining such amount as shall pay the aforesaid note and interest thereon, also a reasonable attorney's fee and such other expenses as may have been incurred, together with the compensation of said mortgagee, returning the surplus money, if any there be, to the said mortgagor, its successors or assigns.

In the event of the sale of any part, portion or all of the assets covered by this mortgage by the person, firm or corporation having title thereto subject to this mortgage, the mortgagee shall have full power and authority to consent to said sale, and satisfy this mortgage, and accept in place and stead of the said mortgage, such consideration as in the judgment of the mortgagee shall be wise and for the best interests of the beneficiaries under this mortgage.

In case of foreclosure of said mortgage, it is agreed that the venue of said action may be laid in King County, State of Washington, and that the mortgagee herein may become the purchaser at such foreclosure sale and in the event of its purchase at said sale, mortgagee herein shall have the right, power and authority to sell, handle, manage or in any other way or manner dispose of the property purchased at such foreclosure sale, on such terms as in the judgment of the mortgagee may seem wise for the use and benefit of and the protection of the beneficiaries under this mortgage; and in the event of the acquiring of title by the mortgagee of the property covered by this mortgage by means other

than foreclosure, the mortgagee shall have the same right, power and authority to sell, handle, manage or in any other way or manner dispose of the property for the use and benefit of the beneficiaries under this mortgage as though title had been secured by and through foreclosure sale.

In witness whereof, the said mortgagor has caused this instrument to be executed and its corporate seal attached by its officers thereunto duly authorized, the day and year first above written.

WESTERN APPLIANCE CO.,
INC.

By /s/ FRED BRICKLEY,
President.

Attest:

/s/ MARJORIE L. CARLSON,
Secretary.

State of Washington
County of King—ss.

Fred Brickley and Marjorie L. Carlson, the President and Secretary respectively of the mortgagor corporation in the foregoing mortgage named, being first duly sworn, on oath depose and say: That the aforesaid mortgage is made in good faith and without any design to hinder, delay or defraud creditors, and that they are authorized to make this affidavit for and on behalf of said corporation.

/s/ MARJORIE L. CARLSON.
/s/ FRED BRICKLEY,

Subscribed and sworn to before me this 1st day of July, A.D. 1952.

[Seal] /s/ A. J. JACKSON,
Notary Public in and for the State of Washington,
Residing at Seattle.

State of Washington
County of King—ss.

This is to certify, that on this 1st day of July A.D. 19.., before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally came Fred Brickley and Marjorie L. Carlson to me known to be respectively the President and Secretary of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal, the day and year in this certificate first above written.

 /s/ A. J. JACKSON,
Notary Public in and for the State of Washington,
Residing at Seattle.

Exhibit "A"

Western Appliance Co., Inc.

Auditor Note—Exhibit "A" to Be Filed but Not
Recorded

Office Equipment

- 1 Only—Corona adding machine #KA85376
- 1 R. C. Allen cash register Mod. 200N
#1048480
- 1 F & E Check Protector #2942060
- 1 3 Drawer file cabinet (wood)
- 1 Uarco receipt register
- 1 Single pedestal desk, oak 32" x 42"
- 1 Double " " " 30½" x 50"
- 1 " " " " 36" x 60"
- 3 Desk lamps, fluorescent
- 1 Desk, single pedestal, 32" x 42" oak
- 2 Chairs, swivel type, oak
- 2 " straight back
- 1 Counter, display half oval 72" long
- 1 Intercommunication set, 4 station Masco

Shop Tools & Equipment

- 1 Only—Baldor bench grinder #3107
- 1 Emerson grinder & buffer #X01260
- 1 Automatic refrigerator drier #2200
- 2 Bench Vises—1 Craftsman—1 Brker
- 2 National Oxygen gauges
- 1 Victor Nitrogen "
- 1 Oxyweld cutting torch #100

- 1 Green charging rack (Kerotest)
- 1 Lot Hand Tools
- 2 Only Refrigerator hand trucks with straps
- 1 Armature growler
- 1 Refrigerator dolly
- 5 Wood work benches, 34'' x 12'
- 1 JBT Iron Tester md 30J
- 1 Iron cooling fan
- 1 Thermocoupling (oven tester)
- 1 182-f service valve kit for hermetics
- 2 Purge pumps
- 1 Exhaust fan
- 3 Metal bench stools
- 2 Straight back chairs
- 1 Norge Hi-temp oil heater

Trucks

- 1 Only International Truck, 1948 pickup Serial #KR2-58624, Motor #GAD 214217566
- 1 Dodge Truck, panel body 1946 Serial #9223421, Motor #T112-178282

EXHIBIT B

Assignment of Accounts and Notes Receivable
of Western Appliance Co., Inc.
Seattle, Wash.

For value received, the undersigned hereby sells, assigns, transfers and sets over unto the Seattle As-

sociation of Credit Men all existing conditional sale contracts, accounts and notes receivable of the business of said Western Appliance Co., Inc., together with all future conditional sale contracts, accounts and notes receivable accruing from the operation of said business, and agrees to forthwith compile a correct and true list of the same showing names, addresses and amounts due, and forward the same to said Seattle Association of Credit Men, together with all promissory notes evidencing the same, and make a corrected list thereof each month hereafter.

This assignment, however, is in trust for the benefit of the creditors of said Western Appliance Co., Inc., and is in conjunction with and ancillary to that certain mortgage in trust executed and delivered to the Seattle Association of Credit Men the day of, 1952, and the terms set forth in said trust mortgage are to govern as to distribution of the funds derived hereby.

Dated at Seattle, Washington, this 1st day of July, 1952.

WESTERN APPLIANCE CO.,
INC.

By /s/ FRED BRICKLEY,
President;

By /s/ MARJORIE L. CARLSON,
Secretary.

State of Washington
County of King—ss.

This is to certify, that on this 1st day of July, 1952, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Fred Brickley and Marjorie L. Carlson, to me personally known to be the President and Secretary respectively of the corporation described in and which executed the foregoing instrument, and on oath stated, each for himself and not one for the other, that they executed the same as the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

/s/ A. J. JACKSON.

Notary Public in and for the State of Washington,
Residing at Seattle.

EXHIBIT C

Bill of Sale in Lieu of Foreclosure

Know All Men by These Presents:

That, whereas, on the 1st day of July, 1952, Western Appliance Co., Inc., a corporation, doing business at 6601 Roosevelt Way, in the City of Seattle,

County of King, State of Washington, did make, execute and deliver to the Seattle Association of Credit Men, a Washington corporation, of Seattle, Washington, a chattel mortgage in trust mortgaging:

All that certain stock of goods, wares, and merchandise, together with all good will incident to the business, all routes, customer lists, patents and patent rights and trade marks, and all personal property of every kind and description used in, about and as a part of the business of said mortgagor, consisting principally of hardware, appliances, auto supplies, tires, etc., and whether or not the same is contained or used in or about the premises above described, including among other things those certain fixtures, furniture, tools, appliances, machinery and equipment and automobiles more specifically described in an itemized list attached to said Chattel Mortgage as Exhibit "A" and made a part thereof, which list did not exclude any other item of property covered by the general description in the said paragraph;

Together with all books of account, and accounts and notes, contracted and to be contracted from the sale of the above goods, wares, and merchandise and additions thereto, the same having been assigned by a separate instrument in writing; and all cash now on hand, deposited in bank, or hereafter acquired;

Together with all goods, wares, and merchandise, furniture and fixtures, tools and appli-

ances, machinery and equipment, and automobiles, which may be added to and incorporated or mixed with the same by said mortgagor, and whether or not such items are renewals, repairs, replacements, or a complete substitution therefor;

to secure the payment of one promissory note of Twenty-two Thousand Dollars (\$22,000.00), as evidenced by Promissory Note dated July 1, 1952; and,

Whereas, said Chattel Mortgage in Trust, hereinbefore referred to, was filed of record in the Auditor's office of King County, Washington, under file No. 2860934, recording No. 4251205, on the 3rd day of July, 1952; and,

Whereas, said Western Appliance Co., Inc., is unable to make payments on said Promissory Note; and,

Whereas, Western Appliance Co., Inc., deems it advisable to avoid the additional costs and expense of foreclosure of said Chattel Mortgage; now, therefore,

The said Western Appliance Co., Inc., by its duly appointed officers, and pursuant to a corporate resolution, does hereby grant, bargain and sell all of the property and rights under the said Chattel Mortgage to Seattle Association of Credit Men, to be sold by said Seattle Association of Credit Men, the proceeds of which are to be applied on the obligations of Western Appliance Co., Inc., which have been filed with the Seattle Association of Credit Men

and which have a right to participate in the distribution of the proceeds under the terms of said Chattel Mortgage.

This Bill of Sale includes all items covered by the aforesaid Chattel Mortgage now located at 6601 Roosevelt Way, Seattle, Washington, a portion of said personal property being more specifically described in an itemized list attached to said Chattel Mortgage and marked Exhibit "A" and made a part hereof, which list shall not be considered as excluding any other items of property covered by the terms and conditions of said Chattel Mortgage.

In witness whereof, said Western Appliance Co., Inc., has executed this instrument this 2 day of June, 1953.

WESTERN APPLIANCE CO.,
INC.

By FRED BRICKLEY,
President,

By MARJORIE L. CARLSON,
Secretary.

State of Washington,
County of King—ss.

On this day personally appeared before me Fred Brickley and Marjorie L. Carlson, to me known to be the President and Secretary of the above-named corporation which executed the foregoing instrument, and acknowledged that said instrument was

the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

Given under my hand and official seal this 2 day June, 1953.

E. V. GRISVARD,
Notary Public in and for the State of Washington,
Residing at Seattle.

EXHIBIT D

WH:VC 9/28/54

(Copy)

Seattle Association of Credit Men
6th Flr. Marion Bldg. .
Seattle 4, Washington

March 27, 1953

National Bank of Commerce
University Branch
1300 E. 45th St.
Seattle 5, Washington

Attention: Mr. Neuslander

Re: Western Appliance Co., Inc.

Gentlemen:

As you are aware the Seattle Association of Credit Men holds a Chattel Mortgage in trust on all of the assets of the above corporation which includes all

accounts and contracts receivable, subject of course to prior assignments to your bank on account of contracts pledged for loans.

In accordance with an agreement entered into this date between the officers of Western Appliance Co., Inc. and the members of the Creditors' Committee at a meeting held in our office, will you please note your records to the effect that when the contracts now in your possession have paid out, that the entire accumulated reserve is to be paid direct to the Seattle Association of Credit Men.

Please acknowledge receipt.

Yours very truly,

SEATTLE ASSOCIATION OF
CREDIT MEN

As Trust Mortgagee of
Western Appliance Co., Inc.

/s/ B. K. COSBY,

By B. K. COSBY.

EVG:ji

We hereby agree to the foregoing.

WESTERN APPLIANCE CO.,
INC.

By /s/ FRED BRICKLEY,
President.

[Endorsed]: Filed August 19, 1955.

[Title of District Court and Cause.]

MOTION TO DISMISS

Comes now The United States of America, defendant above named, by Charles P. Moriarty, United States Attorney for the Western District of Washington; Edward J. McCormick, Jr., Assistant United States Attorney for said district; and Thomas R. Winter, Special Assistant to the Regional Counsel, Internal Revenue Service, and moves to dismiss this action upon the following grounds:

1. That the plaintiff's complaint fails to state a cause of action upon which relief can be granted.
2. That the Court is without jurisdiction under Title 28, U.S.C.A., Sec. 2410, in that that section gives the Court jurisdiction over the United States in suits to quiet title, to foreclose a lien, etc., but does not give the Court jurisdiction over the United States in a suit to adjudicate a tax liability, which is the primary relief sought by the plaintiff, and that section can therefore not be invoked to give jurisdiction over the United States of a case in which jurisdiction is not otherwise granted.
3. That the Court is without jurisdiction in that the judgment and dismissal of the former action by the same plaintiff in the action entitled "Seattle Association of Credit Men, a corporation, Plaintiff, vs. William E. Frank, Director of Internal Revenue for the District of Alaska and Washington, and The United States of America, Defendants", Civil No.

1840, is res judicata of the present action. In support thereof, and attached hereto, is an affidavit of Thomas R. Winter, of counsel for the defendant.

/s/ CHARLES P. MORIARTY,

United States Attorney,

/s/ EDWARD J. McCORMICK, JR.,

Assistant United States

Attorney,

/s/ THOMAS R. WINTER,

Special Assistant to the Regional Counsel Internal
Revenue Service.

Receipt of copy acknowledged.

[Endorsed]: Filed November 14, 1955.

[Title of District Court and Cause.]

MEMORANDUM DECISION

A reading of Title 28 §2410 in entirety makes it plain that the consent to suit by the United States referred to in the section is limited to situations involving judicial sales. *Adler v. Nicholas*, 166 F.2d 674 (10 Cir. 1948) holds otherwise but *Integrity Trust Co. v. U.S.*, 3 F. Supp. 577; *Borough of Kenilworth v. Corwine*, 96 F. Supp. 69; *Miners Sav. Bank of Pittston, Pa. v. U.S.*, 110 F Supp. 563; *Metropolitan Life Ins. Co. v. U.S.*, 107, F.2d 311; and *Bank of America Nat. Trust & Sav. Ass'n. v. U.S.*, 84 F. Supp. 387 are to the contrary. The latter

cases appear to be more consistent with the language of the statute and its legislative history.

The action must be dismissed for want of jurisdiction.

Dated this 6th day of January, 1956.

/s/ GEO. H. BOLDT,
United States District Judge.

[Endorsed]: Filed January 9, 1956.

In the District Court of the United States for the
Western District of Washington, Northern
Division

Civil No. 3992

SEATTLE ASSOCIATION OF CREDIT MEN,
a Corporation,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

ORDER

Hearing on the motion of the defendant, United States of America, to dismiss this action, having come on regularly to be heard before the undersigned Judge of the above-entitled Court on Monday, December 19, 1955; the defendant appearing by Charles P. Moriarty, United States Attorney for the Western District of Washington, and Thomas

R. Winter, Special Assistant to the Regional Counsel, San Francisco Region, Internal Revenue Service, its attorneys, and being represented in court by said Thomas R. Winter; and the plaintiff appearing by Croson, Johnson & Wheelon, its attorneys, and being represented in court by Willard Hatch; written Memorandum of Authorities having been filed on behalf of the parties and the Court having rendered a Memorandum Decision dated January 6, 1956, and good cause appearing therefor, it is hereby

Ordered that the action must be dismissed for want of jurisdiction, and the defendant's motion is granted and the action be, and the same is hereby dismissed.

Dated this 17 day of January, 1956.

/s/ GEO. H. BOLDT,
Judge.

Presented by:

/s/ THOMAS R. WINTER.

Copy received, approved as to form, and notice of presentation hereby waived:

/s/ WILLARD HATCH,

[Endorsed]: Filed January 17, 1956.

Entered January 18, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Seattle Association of Credit Men, a corporation, plaintiff in the above entitled action, having herewith filed the necessary bond, does herewith appeal to the United States Court of Appeals for the Ninth Circuit from the Order of dismissal entered in the above entitled action on the 17th day of January, 1956, and filed on the 18th day of January, 1956, by the Honorable George H. Boldt, United States District Judge.

CROSON, JOHNSON &
WHEELON,

/s/ WILLARD HATCH,
Attorneys for Plaintiff.

[Endorsed]: Filed February 2, 1956.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

That we, Seattle Association of Credit Men, a corporation, the Plaintiff above named, as Principal, and the United Pacific Insurance Company, a corporation organized under the laws of the State of Washington, and authorized to transact the business of surety in the State of Washington, as Surety, are held and firmly bound unto The United States of America, in the just and full sum of two hundred

fifty and no/100 dollars (\$250.00), for which sum, well and truly to be paid, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 30th day of January, 1956.

The condition of this obligation is such, that,

Whereas, on the 17th day of January, 1956, in the above entitled action and Court, the Defendant's motion for dismissal for want of jurisdiction was granted, and

Whereas, The above-named Principal has heretofore given due and proper notice that it appeals from said Order of said Court,

Now, Therefore, if the said Principal, Seattle Association of Credit Men, a corporation, shall pay all costs and damages that may be awarded against it on the appeal, or on the dismissal thereof, not exceeding the sum of two hundred fifty and no/100 dollars (\$250.00), then this obligation to be void; otherwise to remain in full force and effect.

SEATTLE ASSOCIATION OF
CREDIT MEN,

By /s/ WILLARD HATCH,
Its Attorney,

[Seal] UNITED PACIFIC
INSURANCE COMPANY,

By /s/ R. E. EICKMAN,
Attorney-in-Fact.

Countersigned:

ALEXANDER MYERS & CO.

By /s/ KENNETH G. MYERS,
Resident Agent, Seattle, Wash.

[Endorsed]: Filed February 2, 1956.

[Title of District Court and Cause.]

STATEMENT OF POINTS

The Plaintiff, Seattle Association of Credit Men, herewith states the points on which it intends to rely in this appeal.

That the lower court erred in dismissing the plaintiff's Complaint for want of jurisdiction.

CROSON, JOHNSON &
WHEELON,

/s/ WILLARD HATCH,
Attorneys for Plaintiff.

[Endorsed]: Filed February 2, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Wash-

ington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit, and Rule 75(o) of the Federal Rules of Civil Procedure, and designation of counsel, I am transmitting herewith the following original documents in the file dealing with the action, as the record on appeal herein to the United States Court of Appeals for the Ninth Circuit at San Francisco, said papers and documents being identified as follows:

1. Complaint, filed Aug. 19, 1955.
4. Motion Deft. to Dismiss, filed Nov. 14, 1955.
10. Memorandum Decision filed Jan. 9, 1956.
11. Order Dismissing action, filed Jan. 17, 1956.
12. Notice of Appeal, filed Feb. 2, 1956.
13. Bond on Appeal, filed Feb. 2, 1956.
14. Statement of Points on Appeal, filed Feb. 2, 1956.
15. Designation of Contents of Record on appeal, filed 2-3-56.
16. Proof of service of Designation and Statement of Points as filed Feb. 9, 1956.

In witness whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle this 13th day of February, 1956.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for preparation of the record on appeal in this cause, to-wit: Filing fee, Notice of Appeal,

\$5.00; and that said amount has been paid to me by counsel for appellant.

Dated: Seattle, Feb. 13, 1956.

MILLARD P. THOMAS,
Clerk,

By /s/ TRUMAN EGGER,
Chief Deputy.

[Endorsed]: No. 15042. United States Court of Appeals for the Ninth Circuit. Seattle Association of Credit Men, a Corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed February 21, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15042

SEATTLE ASSOCIATION OF CREDIT MEN,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPELLANT'S STATEMENT OF POINTS
AND DESIGNATION OF RECORD

The appellant having heretofore filed its Statement of Points and Designation of Contents of Record on Appeal being papers identified as Nos. 14 and 15 in the certificate of the Clerk of the United States District Court to the Record on Appeal; now, therefore,

The appellant does herewith adopt by reference, the same as though incorporated herein in full, said Statement of Points and Designation of Contents of Record on Appeal as its Statement of Points and Designation of Record as required by Rule 17 (6) of the Rules of the United States Court of Appeals for the Ninth Circuit.

CROSON, JOHNSON &
WHEELON,
/s/ WILLARD HATCH,
Attorneys for Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed February 21, 1956.